

TENNESSEE REAL ESTATE COMMISSION MINUTES

September 5, 2007

The Tennessee Real Estate Commission convened on September 5, 2007, at 9:10 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. The following **Commission Members were present: Chairman Charles Haynes, Vice Chairman William (Bear) Stephenson, Commissioner Gary Cunningham, Commissioner Isaac Northern, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Carol Tate, and Commissioner David Flitcroft. Commissioner Adren Greene was absent. Others Present: Eve Maxwell, Executive Director, Wayne Pugh, Interim Staff Attorney, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the September 2007 Commission meeting. **Commissioner Stephenson made a motion to adopt the agenda; seconded by Commissioner Northern; Motion Carried.**

The next order of business was the approval of the minutes from the August 2007 meeting (**Exhibit 2**). **Commissioner Stephenson made a motion to approve the minutes from the August 2007 meeting; seconded by Commissioner Alexander; Motion Carried.**

The next order of business was the adoption of the 2008 Commission meeting schedule. **Commissioner Stephenson made a motion to adopt the 2008 Commission meeting schedule; seconded by Commissioner Alexander; Motion Carried.**

INFORMAL APPLICANT CONFERENCES

Chadwick Rutledge, applicant, appeared with his Principal Broker Charles Caudell to request licensure as an Affiliate Broker. Mr. Rutledge disclosed convictions for 2nd Degree Assault under Extreme Emotional Distress (1998), First Degree Unlawful Imprisonment (1998) as well as two convictions of Theft Over \$300.00 (1998). **Commissioner Alexander made a motion to approve; seconded by Commissioner Collins; Roll Call Vote: 7 Yes, 0 No; Motion Carried.**

Terrice V. Ramey, applicant, appeared with her Principal Broker Robert Hoff to request licensure as an Affiliate Broker. Ms. Ramey disclosed a conviction for Theft of Property of \$500.00 or less (1997). **Commissioner Cunningham made a motion to approve; seconded by Commissioner Northern; Motion Carried.**

William C. Cooper, applicant, appeared with his Principal Broker Scott Boles to request licensure approval as an Affiliate Broker. Mr. Cooper disclosed convictions for 2 counts of Grand Larceny (1977) and 3 counts of Possession of a Controlled Substance (1977). **Commissioner Collins made a motion to approve; seconded by Commissioner Stephenson; Motion Carried.**

Felix Valdez, applicant, appeared with his Principal Broker Pam Johnsen to request licensure approval for a Timeshare Salesperson license. Mr. Valdez disclosed convictions for Carrying a Concealed Firearm (1986), Distribution of Cocaine (1988), and Reckless Driving (1995). **Commissioner Flitcroft made a motion to approve; seconded by Commissioner Collins; Motion Carried.**

Randall Phillip Bone, applicant, appeared with his Principal Broker Eileen George to request licensure approval for an Affiliate Broker license. Mr. Bone disclosed convictions for 3 counts of Aggravated Assault (1998), 3 counts of Leaving the Scene of an Accident (1998), and Attempted Possession of Marijuana (1998). **Commissioner Northern made a motion to approve; seconded by Commissioner Tate; Motion Carried.**

Leo Jackson, applicant, appeared with his Principal Broker Richard Butts to request approval for a Timeshare Salesperson's license. Mr. Jackson disclosed convictions for Possession with Intent to Sell Scheduled II Drugs (1989) and a DUI (1996). **Commissioner Collins made a motion to approve; seconded by Commissioner Flitcroft; Motion Carried.**

Stephen Upfold, applicant, appeared with his Principal Broker Jimmy Simmons to request approval for an Affiliate Broker license. Ms. Fentress disclosed a conviction for Sale of Marijuana (1968). **Commissioner Collins made a motion to approve; seconded by Commissioner Tate; Motion Carried.**

LICENSEE/APPLICANT REQUESTS

Danny Zellars, licensee 269576, was scheduled to appear to request that the Commission consider his request for reinstatement of his license without penalty. Mr. Zellars did not appear.

The following licensees/applicants requested a waiver of the 50-mile rule:

- **Pearl Dean Vanover, applicant, 314118**
- **Joseph A. Massa, applicant 314311**
- **Patrick Elwood, licensee 288481**
- **William Wingate, applicant 314169**
- **Linda Susanne Flynn, licensee 303511**

Commissioner Alexander made a motion to approve all of the requests for a waiver of the 50-mile rule; seconded by Vice-Chairman Stephenson; Motion Carried.

Gina Yauger, licensee, 282919, requested that the Commission consider her request to attend the spring TREC Commission meeting in Memphis to satisfy her continuing education requirement as a condition of reinstatement. **Commissioner Alexander made a motion to deny; seconded by Commissioner Cunningham; Motion Carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell began to discuss the Complaint report, but the discussion turned to the enforcement of Policy #07-002. Policy #07-002 states that Principal Brokers will be sent an Agreed Citation for \$1000.00 per uninsured licensee in his/her firm. Ms. Maxwell informed the Commission that the Agreed Citations were sent by certified mail. Chairman Haynes inquired about the status of firms that did not claim the initial warning letter sent by certified mail. Ms. Maxwell explained that auditors were sent to the firms. Many of the firms were closed and many came into compliance during the audit. Violations were written accordingly. Mr. Pugh explained the administrative and disciplinary actions that may be taken against the respondents of the E&O complaints. Ms. Maxwell stated that she believes that by issuing the Agreed Citation Principal Brokers will be more aware of their need to supervise their affiliates. There was a discussion regarding how TREC can prevent future E&O non-compliance issues. It was suggested that TREC work closely with Rice Insurance to put administrative measures into place

to promote E&O compliance. Chairman Haynes suggested that Cindy Rice-Grissom from Rice Insurance appear before the Commission to discuss the issues.

Robert "Bob" Vurno, licensee 296754, requested that the Commission consider his request for reinstatement of his license prior to the expiration of his one year license suspension. Wayne Pugh, Interim Staff Attorney, explained the circumstances surrounding Mr. Vurno's one year suspension. Mr. Vurno's former Principal Broker Joe Gifford spoke on Mr. Vurno's behalf. **Commissioner Alexander made a motion to let the final order stand; seconded by Commissioner Cunningham; Commissioner Flitcroft abstained. Motion Carried.**

The Commission recessed for lunch at 11:15 a.m. and reconvened at 12:45 p.m.

EDUCATION REPORT, DR. KATHY RIGGS, EDUCATION DIRECTOR

Dr. Riggs presented courses for Commission evaluation (**Exhibit 3**). There was brief discussion about the course "Valuation of Residential Properties". Dr. Riggs advised the Commission that although this is primarily an appraisal class that she believes that in light of industry concerns regarding Mortgage Fraud, it would be a valuable class for real estate agents. **Vice-Chairman Stephenson made a motion to approve all courses as presented; seconded by Commissioner Tate; Motion Carried.**

Dr. Riggs presented a report (**Exhibit 4**) of all courses currently approved with contracts as a portion of the courses.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report (Exhibit 5)** – TREC has a total of **801** open complaints. However, 59 of the 801 open complaints were staff generated Agreed Citations and 346 are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 39 new complaints since the August meeting. There are 448 complaints in the legal department and 353 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2007-2008 is 25. Total Civil Penalties paid in August were \$6,150.00.

There was a discussion about who is the responsible party for sending an invoice for formal hearing costs to respondents. Mr. Pugh advised that the Staff Attorney is responsible for sending the invoice.

- **E&O discussion (revisited)** – **Commissioner Collins made a motion requiring insurance agencies to send cancellation notices to Principal brokers; seconded by Commissioner Alexander for discussion; Motion opened to discussion; Motion Carried.**

Mr. Odell Binkley, Principal Broker of Odell Binkley Realty & Auction, addressed the Commission regarding E&O insurance and how he believes the Commission may address the issue of non-compliance.

Mr. Pugh advised the Commissioners that if someone calls them regarding the Agreed Citations for E&O non-compliance, they should state that they are unable to discuss the Citations because it is a disciplinary action.

Commissioner Alexander asked Ms. Maxwell if she had discussed with Assistant Commissioner Sullivan the possibility of bringing the auditors in for a Commission meeting. Ms. Maxwell advised the Commission that she hopes to have the auditors attend the November meeting. Commissioner Alexander wishes to have a round table discussion between the Commission and the auditors.

There was a discussion regarding extending the deadline for compliance of E&O. **Vice-Chairman Stephenson made a motion to extend the deadline for compliance to September 17, 2007 at 4:30 p.m.; seconded by Commissioner Northern; Commissioner Collins Voted No; Motion Carried.**

- **TREC Manuals/Budget (Exhibit 6) –** There was a discussion of the printing of the law manuals. The Commissioners prefer to wait until the new rules are approved. However, the rules are still at the Attorney General's office being reviewed and have not been sent to the Secretary of State. Mr. Pugh advised the Commission that the legislature can suspend the rules if there is opposition from the public to the rule changes. Therefore, there is not a definite date for approval of the new rules. The discussion turned to the proposed 2008 budget for TREC. Ms. Maxwell presented to the Commission a report regarding the categories and the budget and the total amount that TREC may spend without asking for a budget expansion. Ms. Maxwell advised the Commission that the Commission may only use the interest on the total balance of the Education and Recovery Fund. Chairman Haynes and Commissioner Cunningham explained to Ms. Maxwell the steps that had been taken so far to get the manuals printed and distributed. Chairman Haynes would like to see the past budget for 2005 or 2006 listing what TREC actually spent to get a sense of history in order to allocate money effectively. Chairman Haynes wishes to have a budget meeting so that the Commission may have input into the line item allocation of moneys. Ms. Maxwell explained that we can split the manual order over 2 fiscal years and have enough money in the budget to cover the printing and mailing of the manual. The Commission would like input to where the education seminars will be held in 2008. **Commissioner Alexander made a motion that Chairman Haynes, Vice-Chairman Stephenson, and Executive Director Eve Maxwell meet with the legal department to discuss the Commission's role in budgeting moneys available in the Education and Recovery Fund and that the Chairman and Vice-Chairman may meet as a sub-committee and adjust the line items of the budget; seconded by Commissioner Northern; Motion Carried.** The discussion returned to the TREC manuals. Ms. Maxwell and Commissioner Cunningham explained that to cut the costs of printing and mailing the manuals, simple adjustments could be made to the book physically to reduce shipping cost. The index could be removed along with certain legal annotations in the text. **Commissioner Alexander made a motion to order 7,000 manuals with Commissioner Flitcroft's name added to the list of Commissioners in the manual and that Commissioner Cunningham and Eve Maxwell work together to negotiate with Lexis Nexis regarding the cost of printing and shipping the 7,000 manuals; seconded by Commissioner Northern; Motion Carried.**

Ms. Maxwell presented a letter from Shirley Zeitlin, Principal Broker of Shirley Zeitlin and Company Realtors, requesting that they be granted a 60 day transition period to get their company name changed. **Commissioner Collins made a motion to approve Ms. Zeitlin's request; seconded by Commissioner Alexander; Motion Carried.**

Legal Report, Wayne Pugh, Interim Staff Attorney (Exhibit 7)

- **2006040981 – Commissioner Collins made a motion for a Formal Hearing with authority to settle by Consent Order of not less than \$500.00 as to the affiliate broker and \$1000.00 to the Principal broker/firm and respondent(s). Affiliate broker and Principal broker must attend a two day TREC Commission meeting or complete 16 hours of continued education in contract writing; seconded by Commissioner Northern; Motion Carried.**
- **2006042761 – Commissioner Alexander abstained and explained that he had reviewed the file previously. Interim Staff Attorney Wayne Pugh asked the Commission to defer the complaint until he has an opportunity to discuss the complaint with Commissioner Alexander. Vice-Chairman Stephenson made a motion to defer the complaint until the October 2007 Commission meeting; seconded by Commissioner Tate; Motion Carried.**
- **2006039151 – Commissioner Collins made a motion to close; seconded by Commissioner Cunningham; Motion Carried.**
- **2006038821 – Commissioner Collins made a motion to close; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2005003911 – Vice-Chairman Stephenson made a motion to close and flag the file; seconded by Commissioner Collins; Motion Carried.**
- **2004191301 – Commissioner Collins made a motion to close; seconded by Commission Northern; Motion Carried.**
- **2006015891 – Vice-Chairman Stephenson made a motion to close; seconded by Commissioner Northern; Motion Carried.**
- **2005044831 – Commissioner Northern made a motion to close; seconded by Commissioner Tate; Motion Carried.**
- **2004199221 – Commissioner Northern made a motion to close; seconded by Commissioner Collins; Motion Carried.**
- **2005038041 – Commissioner Collins made a motion to close; seconded by Commissioner Flitcroft; Motion Carried.**
- **2006001671 & 2006005911 – Commissioner Collins made a motion to close and flag his license file should he attempt to reinstate; seconded by Commissioner Alexander; Motion Carried.**
- **2006035441 – Commissioner Northern made a motion to dismiss; seconded by Vice-Chairman Stephenson; Motion Carried.**

Commissioner Reports

Commissioner Flitcroft reported on the East Tennessee Commission meeting preparations. The longevity breakfast for license holders of 40 plus years will be held at Rothchild's in Knoxville. The meeting will be held at the Supreme Court Building at 719 Locust Street in Knoxville.

Vice-Chairman Stephenson thanked Ms. McDermott for her hard work on her monthly preparations for the meeting.

Commissioner Northern thanked Mr. Pugh for stepping in to act as Interim Staff Attorney.

Commissioner Cunningham congratulated Ms. Maxwell for her hard work preparing and presenting at the meeting.

Comments from Attendees

Chairman Haynes called for comments from the attendees.

Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Chairman Haynes adjourned the Commission Meeting September 5, 2007 at 3:45 p.m.

TENNESSEE REAL ESTATE SUB-COMMITTEE COMMISSION MINUTES September 6, 2007

The Tennessee Real Estate Commission sub-committee convened on September 6, 2007, at 9:45 a.m., in the Conference Room of the Tennessee Real Estate Commission office, Davy Crockett Tower, 500 James Robertson Parkway, Ste 180, Nashville, Tennessee. The following **Commission Members were present: Chairman Charles Haynes and Vice Chairman William (Bear) Stephenson. Others Present: Eve Maxwell, Executive Director, Wayne Pugh, Interim Staff Attorney, and Kelly McDermott, Administrative Secretary.** The purpose of the sub-committee meeting was to adjust line item allocations for the budget for the Education and Recovery Fund.

Ms. Maxwell reported that the interest accrued on the Education and Recovery Fund for the Fiscal Year 2006-2007 was \$504,536.95. Ms. Maxwell explained that unused interest rolls back into the Principle of the Education and Recovery Fund. Ms. Maxwell explained that there is a Work Program cap of \$292,000. This amount is available for use by the Commission for the fiscal year 2007-2008. Chairman Haynes wants Wayne Pugh to ask Mary Moody, Deputy Commissioner of the Department of Commerce & Insurance and/or Beth Martin, General Counsel of the Department of Commerce & Insurance if the Tennessee Real Estate Commission has the authority by state statute to spend the unused earned interest from previous years to fund the 2007-2008 fiscal year costs, and if the Commission has the authority to spend more than the \$292,000 currently available. Mr. Pugh will meet with legal counsel and report back to the Commission. Ms. Maxwell reviewed the line items with the Commissioners. There was a

discussion of which line items could be adjusted throughout the year as the need arises and which line items are unable to be adjusted. The discussion turned to the travel budget. It was decided that TREC would budget \$50,000 for travel. Costs for various line items were estimated. It was decided that if the cap of \$292,000 stands, the manuals will have to be ordered over the course of two fiscal years in order to comply with the budget. It was decided that \$48,000 should be backed out of printing and put into the travel line item amount and that \$192,000 should be allotted to printing of the manuals.

Chairman Haynes adjourned the meeting September 6, 2007 at 11:35 a.m.